

Assembly Bill No. 140

Passed the Assembly April 16, 2009

Chief Clerk of the Assembly

Passed the Senate June 29, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 2.5 (commencing with Section 4659.5) to Chapter 5 of Division 4.5 of the Welfare and Institutions Code, relating to services for persons with developmental disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, Beall. Developmental disabilities.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. Under existing law, the regional centers purchase needed services for individuals with developmental disabilities through approved service providers or arrange for their provision through other publicly funded agencies.

This bill would establish procedures for the resolution of disputes between a regional center and a generic agency, as defined, over provision of, or payment for, services that are contained in an individualized family service plan or individual program plan for any child under 6 years of age.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 4659.5) is added to Chapter 5 of Division 4.5 of the Welfare and Institutions Code, to read:

Article 2.5. Interagency Dispute Resolution

4659.5. (a) This article shall apply to any dispute over the provision of services where the regional center believes that a generic agency, as defined in subdivision (g), is legally obligated to fund or provide a service or services that are contained in the individualized family service plan or individual program plan for any child under six years of age.

(b) This article shall apply only to disputes over which entity is to deliver or pay for a specific type, frequency, or duration of

services, or any combination thereof, when the services are contained in the individualized family service plan or individual program plan for any child under six years of age. This article shall not apply to the resolution of disputes between a consumer or his or her authorized representative and a regional center over the provision of, or payment for, a service, nor shall this article apply to the determination of eligibility for any service.

(c) This article does not apply when the dispute has been decided after a due process hearing or resolved by the agreement of all parties, in a proceeding under the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) in which the regional center and local educational agency have been joined.

(d) This article does not apply to a dispute over the type, frequency, and duration of service when a consumer has requested mediation or a due process hearing under the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and the regional center and local educational agency have been joined in the proceeding.

(e) This article does not modify the mandated responsibility of a regional center or a local educational agency to fund services identified in the individualized family service plan as set forth in subdivisions (b) to (e), inclusive, of Section 95014 of the Government Code and Sections 52106 to 52110, inclusive, of Title 17 of the California Code of Regulations.

(f) This article does not modify the responsibilities of regional centers to fund services pursuant to this division.

(g) For purposes of this article, “generic agency” means a publicly funded agency referred to in paragraph (8) of subdivision (a) of Section 4648, except that the term does not apply to Medi-Cal specialty mental health plans that are governed by dispute resolution processes outlined in Chapter 11 (commencing with Section 1810.100) of Division 1 of Title 9 of the California Code of Regulations, an individual, organization, or entity operating under a Medi-Cal managed care plan contract with the State Department of Health Care Services under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9, the Genetically Handicapped Persons Program, administered by the State Department of Health Care Services pursuant to Article 1 (commencing with Section

125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code, or to the California Children's Services Program administered by the State Department of Health Care Services pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

4659.7. (a) Whenever a regional center believes that a generic agency is responsible for providing or paying for a service required pursuant to Sections 4646.5 to 4648, inclusive, or Section 95020 of the Government Code and specified in the consumer's individualized family service plan or individual program plan, and the generic agency is not providing or funding the service or services, the regional center may submit a written notification of the failure to provide the service and a request for dispute resolution to the appropriate generic agency. Any regional center that files written notification of the failure to provide a service and a request for dispute resolution with a generic agency as set forth in this section, shall provide written notification of its request for resolution to the consumer's parent, legal guardian, or authorized representative. The regional center may withdraw its request for dispute resolution at any time during this process.

(b) (1) Upon receipt of the written notification made by the regional center, the generic agency and the regional center shall have 15 calendar days to meet to resolve the dispute unless the generic agency notifies the regional center in writing that it needs additional time, up to 15 days, to make an initial assessment of whether the child meets the basic eligibility requirements for the program or type of service in question.

(2) The generic agency and the regional center shall prepare a written copy of the meeting resolution which shall be mailed to the parent, guardian, or other authorized representative within 10 calendar days of the meeting. The resolution shall specify the regional center or generic agency responsible for providing the service.

(c) (1) If the dispute cannot be resolved to the satisfaction of the regional center and the generic agency, within 10 calendar days of the meeting, each party shall submit his or her contentions on the issue in writing to the Director of the Office of Administrative Hearings within 30 calendar days of the meeting. The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and issue a written decision within 30 calendar

days of receipt of the case. The decision shall specify the regional center or generic agency responsible for the service or services. The Office of Administrative Hearings may award reimbursement retroactively to the date the prevailing party initiated the provision of the services that were in dispute. A written copy of the resolution shall be mailed to the parent, guardian, or authorized representative, the Director of Developmental Services, the regional center, and the generic agency involved in the dispute resolution process.

(2) The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be the final administrative decision for all agencies that are parties to the dispute.

(3) Nothing in this article shall be construed to supersede regional center or generic agency procedures for subsequent review and modification, as appropriate, of the type, frequency, or duration of services pursuant to the agency's program or treatment planning process.

(d) (1) The submission of a notification pursuant to subdivision (a) shall not interfere with a consumer's right to receive the services and supports in his or her individualized family service plan or individual program plan on a timely basis.

(2) Arrangements for the provision of an interim service or services may be made by written agreement between the regional center and the generic agency, provided the child's individualized family service plan or individual program plan is not altered, except as to which agency delivers or pays for the service if the service or services are included in the individualized family service plan or individual program plan.

(e) Nothing in this section shall prevent a consumer or his or her authorized representative from pursuing administrative remedies otherwise available, including remedies pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, of this code or Sections 52160 to 52174, inclusive, of Title 17 of the California Code of Regulations or, after exhaustion of any applicable administrative remedies, pursuing available remedies through a civil action in any court of competent jurisdiction.

(f) Once the dispute resolution procedures have been completed, the agency determined responsible for the service shall pay for and provide the service, and shall reimburse the other agency that provided the service pursuant to subdivision (d), if applicable.

(g) The State Department of Developmental Services shall pay for the services provided by the Office of Administrative Hearings pursuant to this section.

4659.8. The resolution under this article of whether a regional center or generic agency is the responsible party for providing the service in a particular matter shall not set a precedent for the resolution of any other matter.

Approved _____, 2009

Governor